

11-11-03

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ASSEMBLY SUBSTITUTE AMENDMENT ,
TO 2003 ASSEMBLY BILL 531

Regen

1 AN ACT *to repeal* 560.30 (10) (c) and 560.37 (3m) (a) 1.; *to renumber* 560.32 (2)
2 (c); *to renumber and amend* 560.30 (9), 560.31 (1), 560.32 (2) (b), 560.32 (3),
3 560.33 (1) (b), 560.33 (2), 560.34 (1) (d), 560.34 (1m) (a) 2., 560.34 (2), 560.36
4 (intro.) and 560.36 (1) to (4); *to consolidate, renumber and amend* 560.37
5 (3m) (a) (intro.) and 2.; *to amend* 71.05 (6) (a) 15., 71.21 (4), 71.26 (2) (a), 71.34
6 (1) (g), 71.45 (2) (a) 10., 77.92 (4), subchapter II (title) of chapter [precedes
7 560.30], 560.30 (3), 560.30 (10) (intro.), 560.30 (10) (a), 560.30 (10) (b), 560.30
8 (10) (d), 560.31 (2) (b), 560.32 (2) (d), 560.33 (1) (intro.), 560.33 (1) (a), 560.33
9 (1) (e), 560.33 (1) (g), 560.34 (1) (a) 1., 560.34 (1) (a) 2. a., 560.34 (1) (a) 2. b.,
10 560.34 (1) (b), 560.34 (1) (c), 560.34 (1) (e), 560.34 (1m) (b), 560.34 (4), 560.35
11 (2) (intro.), 560.35 (2) (a), 560.35 (2) (c), 560.35 (3), 560.37 (4) and 560.37 (5); and
12 *to create* 71.07 (7m), 71.10 (4) (cp), 71.28 (7m), 71.30 (3) (dm), 71.47 (7), 71.47
13 (7m), 71.49 (1) (dm), 71.49 (1) (dn), 560.30 (5g), 560.30 (5r), 560.30 (9) (d), 560.30

(10) (e), 560.31 (2) (g), 560.31 (2) (h), 560.31 (2) (i), 560.31 (2) (j), 560.31 (2) (k), 560.32 (2) (b) 2., 560.32 (2) (c) 2., 560.32 (3) (b), 560.33 (1) (b) 2., 560.33 (1) (h), 560.33 (1) (i), 560.33 (1) (j), 560.33 (1) (k), 560.33 (2) (b) and (c), 560.34 (1) (d) 2., 560.34 (1) (f), 560.34 (1e), 560.34 (1m) (a) 2. b., 560.34 (2) (a) to (k), 560.34 (5), 560.34 (6), 560.35 (1c), 560.35 (1r), 560.35 (2) (d), 560.36 (2m) and 560.37 (1m) of the statutes; **relating to:** certified capital companies, creating a certified capital company income and franchise tax credit, requesting a performance audit, providing an exemption from emergency rule procedures, and requiring the exercise of rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.05 (6) (a) 15. of the statutes is amended to read:

71.05 (6) (a) 15. The amount of the credits computed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), (3g), ~~and (3s)~~, and (7m) and not passed through by a partnership, limited liability company, or tax-option corporation that has added that amount to the partnership's, company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g).

SECTION 2. 71.07 (7m) of the statutes is created to read:

71.07 (7m) CERTIFIED CAPITAL COMPANY CREDIT. (a) In this subsection:

1. "Certified capital company" has the meaning given in s. 560.30 (2).
2. "Certified capital investment" has the meaning given in s. 560.30 (4).
3. "Claimant" means a person who is subject to taxation under subchs. I, II, and IV of ch. 76, a credit union organized under ch. 186, a savings bank organized under ch. 214, a savings and loan association organized under ch. 215, or a bank organized under ch. 221.

for the first 2 taxable years and 11.25 percent of that investment for the remaining 8 taxable years

1 4. "Investment date" has the meaning given in s. 560.30 (6).

2 5. "Investment pool" has the meaning given in s. 560.30 (7).

3 6. "Qualified investment" has the meaning given in s. 560.30 (11).

4 (b) A claimant who makes a certified capital investment of at least \$1,000,000

5 may claim as a credit against the tax imposed under ss. 71.02 and 71.08, up to the

6 amount of those taxes, for 10 years beginning with the year of the investment, an

7 amount equal to either ~~10~~⁵ percent of that investment or the amount by which the sum

8 of the claimant's certified capital investments and the claimant's qualified

9 investments exceeds the claimant's qualified investments in the taxable year before

10 the claimant first claimed the credit under this subsection, whichever is less.

11 (c) Subsection 71.28 (4) (e), (f), (g), and (h), as it applies to the credit under 71.28

12 (4), applies to the credit under this subsection.

13 (d) Partnerships, limited liability companies, and tax-option corporations may

14 not claim the credit under this subsection, but the eligibility for, and the amount of,

15 the credit are based on their payment of a certified capital investment. A

16 partnership, limited liability company, or tax-option corporation shall compute the

17 amount of credit that each of its partners, members, or shareholders may claim and

18 shall provide that information to each of them. Partners, members of limited liability

19 companies, and shareholders of tax-option corporations may claim the credit in

20 proportion to their ownership interest.

21 (e) 1. If a certified capital company is decertified, or an investment pool is

22 disqualified, under s. 560.37 before the certified capital company fulfills the

23 investment requirement under s. 560.34 (1m) (a) 1. with respect to the investment

24 pool, any claimant that has received a credit under this subsection with respect to

1 that investment pool shall repay that credit to the department of revenue and may
2 not claim more credit in respect to that investment pool.

3 2. If a certified capital company fulfills the investment requirement under s.
4 560.34 (1m) (a) 1. with respect to an investment pool but the certified capital
5 company is decertified, or an investment pool is disqualified, under s. 560.37 before
6 the certified capital company fulfills the investment requirement under s. 560.34
7 (1m) (a) 2. for that investment pool, any claimant that has received a credit under
8 this subsection with respect to that investment pool shall repay all credits that were
9 claimed for taxable years after the taxable year that includes the 3rd anniversary of
10 the investment date of the investment pool and may claim no more credits for taxable
11 years after the taxable year that includes the 3rd anniversary of the investment date
12 of the investment pool.

13 **SECTION 3.** 71.10 (4) (cp) of the statutes is created to read:

14 71.10 (4) (cp) The certified capital company credit under s. 71.07 (7m).

15 **SECTION 4.** 71.21 (4) of the statutes is amended to read:

16 71.21 (4) Credits computed by a partnership under s. 71.07 (2dd), (2de), (2di),
17 (2dj), (2dL), (2dm), (2ds), (2dx), (3g), ~~and (3s).~~ and (7m) and passed through to
18 partners shall be added to the partnership's income.

19 **SECTION 5.** 71.26 (2) (a) of the statutes is amended to read:

20 71.26 (2) (a) *Corporations in general.* The "net income" of a corporation means
21 the gross income as computed under the Internal Revenue Code as modified under
22 sub. (3) minus the amount of recapture under s. 71.28 (1di) plus the amount of credit
23 computed under s. 71.28 (1), (3), (4), and (5) plus the amount of the credit computed
24 under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), ~~and (3g).~~ and (7m)
25 and not passed through by a partnership, limited liability company, or tax-option

1 corporation that has added that amount to the partnership's, limited liability
2 company's, or tax-option corporation's income under s. 71.21 (4) or 71.34 (1) (g) plus
3 the amount of losses from the sale or other disposition of assets the gain from which
4 would be wholly exempt income, as defined in sub. (3) (L), if the assets were sold or
5 otherwise disposed of at a gain and minus deductions, as computed under the
6 Internal Revenue Code as modified under sub. (3), plus or minus, as appropriate, an
7 amount equal to the difference between the federal basis and Wisconsin basis of any
8 asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction
9 during the taxable year, except as provided in par. (b) and s. 71.45 (2) and (5).

10 **SECTION 6.** 71.28 (7m) of the statutes is created to read:

11 **71.28 (7m) CERTIFIED CAPITAL COMPANY CREDIT.** (a) In this subsection:

- 12 1. "Certified capital company" has the meaning given in s. 560.30 (2).
13 2. "Certified capital investment" has the meaning given in s. 560.30 (4).
14 3. "Claimant" means a person who is subject to taxation under subchs. I, II, and
15 IV of ch. 76, a credit union organized under ch. 186, a savings bank organized under
16 ch. 214, a savings and loan association organized under ch. 215, or a bank organized
17 under ch. 221.

18 4. "Investment date" has the meaning given in s. 560.30 (6).

19 5. "Investment pool" has the meaning given in s. 560.30 (7).

20 6. "Qualified investment" has the meaning given in s. 560.30 (11).

21 (b) A claimant who makes a certified capital investment of at least \$1,000,000
22 may claim as a credit against the tax imposed under s. 71.23, up to the amount of
23 those taxes, for 10 years beginning with the year of the investment, an amount equal
24 to either ⁵~~10~~ percent of that investment or the amount by which the sum of the

25 claimant's certified capital investments and the claimant's qualified investments

*for the first 2 taxable years and 11.25 percent of that investment
for the remaining 8 taxable years*

1 exceeds the claimant's qualified investments in the taxable year before the claimant
2 first claimed the credit under this subsection, whichever is less.

3 (c) Subsection (4) (e), (f), (g), and (h), as it applies to the credit under sub. (4),
4 applies to the credit under this subsection.

5 (d) Partnerships, limited liability companies, and tax-option corporations may
6 not claim the credit under this subsection, but the eligibility for, and the amount of,
7 the credit are based on their payment of a certified capital investment. A
8 partnership, limited liability company, or tax-option corporation shall compute the
9 amount of credit that each of its partners, members, or shareholders may claim and
10 shall provide that information to each of them. Partners, members of limited liability
11 companies, and shareholders of tax-option corporations may claim the credit in
12 proportion to their ownership interest.

13 (e) 1. If a certified capital company is decertified, or an investment pool is
14 disqualified, under s. 560.37 before the certified capital company fulfills the
15 investment requirement under s. 560.34 (1m) (a) 1. with respect to the investment
16 pool, any claimant that has received a credit under this subsection with respect to
17 that investment pool shall repay that credit to the department of revenue and may
18 not claim more credit in respect to that investment pool.

19 2. If a certified capital company fulfills the investment requirement under s.
20 560.34 (1m) (a) 1. with respect to an investment pool but the certified capital
21 company is decertified, or an investment pool is disqualified, under s. 560.37 before
22 the certified capital company fulfills the investment requirement under s. 560.34
23 (1m) (a) 2. for that investment pool, any claimant that has received a credit under
24 this subsection with respect to that investment pool shall repay all credits that were
25 claimed for taxable years after the taxable year that includes the 3rd anniversary of

1 the investment date of the investment pool and may claim no more credits for taxable
2 years after the taxable year that includes the 3rd anniversary of the investment date
3 of the investment pool.

4 **SECTION 7.** 71.30 (3) (dm) of the statutes is created to read:

5 71.30 (3) (dm) The certified capital company credit under s. 71.28 (7m).

6 **SECTION 8.** 71.34 (1) (g) of the statutes is amended to read:

7 71.34 (1) (g) An addition shall be made for credits computed by a tax-option
8 corporation under s. 71.28 (1dd), (1de), (1di), (1dj), (1dL), (1dm), (1ds), (1dx), (3), and
9 (3g), and (7m) and passed through to shareholders.

10 **SECTION 9.** 71.45 (2) (a) 10. of the statutes is amended to read:

11 71.45 (2) (a) 10. By adding to federal taxable income the amount of credit
12 computed under s. 71.47 (1dd) to (1dx), (7) and (7m) and not passed through by a
13 partnership, limited liability company, or tax-option corporation that has added that
14 amount to the partnership's, limited liability company's, or tax-option corporation's
15 income under s. 71.21 (4) or 71.34 (1) (g) and the amount of credit computed under
16 s. 71.47 (1), (3), (4), and (5).

17 **SECTION 10.** 71.47 (7) of the statutes is created to read:

18 71.47 (7) CERTIFIED CAPITAL COMPANY CREDIT. (a) In this subsection:

- 19 1. "Certified capital company" has the meaning given in s. 560.30 (2).
- 20 2. "Certified capital investment" has the meaning given in s. 560.30 (4).
- 21 3. "Investment date" has the meaning given in s. 560.30 (6).
- 22 4. "Investment pool" has the meaning given in s. 560.30 (7).
- 23 5. "Qualified investment" has the meaning given in s. 560.30 (11).

24 (b) An insurer who makes a certified capital investment of at least \$1,000,000
25 may claim as a credit against the tax imposed under s. 71.43, for 10 years beginning

*for the first 2 taxable years and 11.25 percent of that investment
for the remaining 8 taxable years*

(8)-

(1) with the year of the investment, an amount equal to either ~~10~~⁵ percent of that investment or the amount by which the sum of the insurer's certified capital investments and the insurer's qualified investments exceeds the insurer's qualified investments in the taxable year before the insurer first claimed the credit under this section, whichever is less.

(c) Section 71.28 (4) (e), (f), (g), and (h), as it applies to the credit under s. 71.28 (4), applies to the credit under this subsection.

(d) 1. If a certified capital company is decertified, or an investment pool is disqualified, under s. 560.37 before the certified capital company fulfills the investment requirement under s. 560.34 (1m) (a) 1. with respect to the investment pool, any insurer that has received a credit under this subsection with respect to that investment pool shall repay that credit to the department of revenue and may not claim more credit in respect to that investment pool.

2. If a certified capital company fulfills the investment requirement under s. 560.34 (1m) (a) 1. with respect to an investment pool but the certified capital company is decertified, or an investment pool is disqualified, under s. 560.37 before the certified capital company fulfills the investment requirement under s. 560.34 (1m) (a) 2. for that investment pool, any insurer that has received a credit under this subsection with respect to that investment pool shall repay all credits that were claimed for taxable years after the taxable year that includes the 3rd anniversary of the investment date of the investment pool and may claim no more credits for taxable years after the taxable year that includes the 3rd anniversary of the investment date of the investment pool.

(e) An insurer may sell a credit under this subsection to another insurer who is subject to the tax imposed under s. 71.43 if the insurer notifies the commissioner

1 of insurance and the department of revenue of the sale and includes with such
2 notifications copies of the transfer documents.

3 **SECTION 11. 71.47 (7m)** of the statutes is created to read:

4 **71.47 (7m) CERTIFIED CAPITAL COMPANY CREDIT.** (a) In this subsection:

5 1. "Certified capital company" has the meaning given in s. 560.30 (2).

6 2. "Certified capital investment" has the meaning given in s. 560.30 (4).

7 3. "Claimant" means a person who is subject to taxation under subchs. I, II, and
8 IV of ch. 76, a credit union organized under ch. 186, a savings bank organized under
9 ch. 214, a savings and loan association organized under ch. 215, or a bank organized
10 under ch. 221.

11 4. "Investment date" has the meaning given in s. 560.30 (6).

12 5. "Investment pool" has the meaning given in s. 560.30 (7).

13 6. "Qualified investment" has the meaning given in s. 560.30 (11).

14 (b) A claimant who makes a certified capital investment of at least \$1,000,000
15 may claim as a credit against the tax imposed under s. 71.43, up to the amount of
16 those taxes, for 10 years beginning with the year of the investment, an amount equal
17 to either ~~10~~⁵ percent of that investment or the amount by which the sum of the

18 claimant's certified capital investments and the claimant's qualified investments
19 exceeds the claimant's qualified investments in the taxable year before the claimant
20 first claimed the credit under this subsection, whichever is less.

21 (c) Subsection 71.28 (4) (e), (f), (g), and (h), as it applies to the credit under 71.28
22 (4), applies to the credit under this subsection.

23 (d) Partnerships, limited liability companies, and tax-option corporations may
24 not claim the credit under this subsection, but the eligibility for, and the amount of,
25 the credit are based on their payment of a certified capital investment. A

*for the first 2 taxable years and 11.25 percent of that investment for
the remaining 8 taxable years*

1 partnership, limited liability company, or tax-option corporation shall compute the
2 amount of credit that each of its partners, members, or shareholders may claim and
3 shall provide that information to each of them. Partners, members of limited liability
4 companies, and shareholders of tax-option corporations may claim the credit in
5 proportion to their ownership interest.

6 (e) 1. If a certified capital company is decertified, or an investment pool is
7 disqualified, under s. 560.37 before the certified capital company fulfills the
8 investment requirement under s. 560.34 (1m) (a) 1. with respect to the investment
9 pool, any claimant that has received a credit under this subsection with respect to
10 that investment pool shall repay that credit to the department of revenue and may
11 not claim more credit in respect to that investment pool.

12 2. If a certified capital company fulfills the investment requirement under s.
13 560.34 (1m) (a) 1. with respect to an investment pool but the certified capital
14 company is decertified, or an investment pool is disqualified, under s. 560.37 before
15 the certified capital company fulfills the investment requirement under s. 560.34
16 (1m) (a) 2. for that investment pool, any claimant that has received a credit under
17 this subsection with respect to that investment pool shall repay all credits that were
18 claimed for taxable years after the taxable year that includes the 3rd anniversary of
19 the investment date of the investment pool and may claim no more credits for taxable
20 years after the taxable year that includes the 3rd anniversary of the investment date
21 of the investment pool.

22 SECTION 12. 71.49 (1) (dm) of the statutes is created to read:

23 71.49 (1) (dm) Certified capital company credit under s. 71.47 (7).

24 SECTION 13. 71.49 (1) (dn) of the statutes is created to read:

25 71.49 (1) (dn) The certified capital company credit under s. 71.47 (7m).

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SECTION 14. 77.92 (4) of the statutes is amended to read:

77.92 (4) "Net business income", with respect to a partnership, means taxable income as calculated under section 703 of the Internal Revenue Code; plus the items of income and gain under section 702 of the Internal Revenue Code, including taxable state and municipal bond interest and excluding nontaxable interest income or dividend income from federal government obligations; minus the items of loss and deduction under section 702 of the Internal Revenue Code, except items that are not deductible under s. 71.21; plus guaranteed payments to partners under section 707 (c) of the Internal Revenue Code; plus the credits claimed under s. 71.07 (2dd), (2de), (2di), (2dj), (2dL), (2dm), (2dr), (2ds), (2dx), ~~and (3g), and (3s), and (7m)~~; and plus or minus, as appropriate, transitional adjustments, depreciation differences, and basis differences under s. 71.05 (13), (15), (16), (17), and (19); but excluding income, gain, loss, and deductions from farming. "Net business income", with respect to a natural person, estate, or trust, means profit from a trade or business for federal income tax purposes and includes net income derived as an employee as defined in section 3121 (d) (3) of the Internal Revenue Code.

SECTION 15. Subchapter II (title) of chapter [precedes 560.30] of the statutes is amended to read:

CHAPTER 560

SUBCHAPTER II

~~CERTIFIED WISCONSIN~~ CAPITAL COMPANIES

SECTION 16. 560.30 (3) of the statutes is amended to read:

560.30 (3) "Certified capital company tax credit" means the tax credit under ~~ss. 71.07 (7m), 71.28 (7m), 71.47 (7) and (7m), and~~ 76.635.

SECTION 17. 560.30 (5g) of the statutes is created to read:

1 560.30 (5g) "Early stage business" means a qualified business that satisfies
2 any of the following criteria:

3 (a) At the time that a certified capital company makes an initial investment in
4 the business, the business is involved in activities related to prototype development,
5 establishment of initial production or service processes, or other development of
6 initial product or service offerings.

7 (b) During the fiscal year preceding the year in which a certified capital
8 company makes an initial investment in the business, the business had gross
9 revenues of less than \$2,000,000, on a consolidated basis, as determined in
10 accordance with generally accepted accounting principles.

11 (c) The business is approved as an early stage business by the department
12 under s. 560.33 (2).

13 ~~SECTION 18.~~ 560.30 (5r) of the statutes is created to read:

14 560.30 (5r) "Investment criteria" means the investment criteria submitted to
15 the department under s. 560.31 (2) (j), or any investment criteria subsequently
16 approved as provided under the rules of the department.

17 ~~SECTION 19.~~ 560.30 (9) of the statutes is renumbered 560.30 (9) (intro.) and
18 amended to read:

19 560.30 (9) (intro.) "Qualified debt instrument" means a debt instrument that
20 a certified capital company issues at par value or at a premium; ~~that has~~ and that
21 satisfies all of the following criteria:

22 (a) The debt instrument has an original maturity date of at least 5 years from
23 the date on which it was issued; ~~that.~~

24 (b) The debt instrument has a repayment schedule that is no faster than a level
25 principal amortization ~~and, until~~ over 5 years.

1 (c) Until the certified capital company may make distributions other than
2 qualified distributions, the interest, distribution or payment features of which the
3 debt instrument are not related to the certified capital company's profitability or the
4 performance of its investment portfolio.

5 SECTION ~~20~~ 560.30 (9) (d) of the statutes is created to read:

6 560.30 (9) (d) The debt instrument does not permit the certified investor to
7 receive prepayment of interest.

8 SECTION ~~21~~ 560.30 (10) (intro.) of the statutes is amended to read:

9 560.30 (10) (intro.) "Qualified distribution" means a distribution or payment
10 by a certified capital company ~~to its equity holders~~ for any of the following:

11 SECTION ~~22~~ 560.30 (10) (a) of the statutes is amended to read:

12 560.30 (10) (a) The costs of forming, ~~and syndicating, managing or operating~~
13 the certified capital company ~~)~~ *up to 2.5% percent investment pool or \$750,000, whichever is less*

14 SECTION ~~23~~ 560.30 (10) (b) of the statutes is amended to read:

15 560.30 (10) (b) An annual management fee that does not exceed 2.5% of the
16 certified capital company's total certified capital or the cost of managing and
17 operating the certified capital company, whichever is less.

18 SECTION ~~24~~ 560.30 (10) (c) of the statutes is repealed.

19 SECTION ~~25~~ 560.30 (10) (d) of the statutes is amended to read:

20 560.30 (10) (d) A projected increase in federal or state taxes, including
21 excluding penalties and interest on those taxes, of the equity owners of the certified
22 capital company if those amounts are related to the certified capital company's
23 ownership, management, or operation.

24 SECTION ~~26~~ 560.30 (10) (e) of the statutes is created to read:

1 560.30 (10) (e) Reasonable costs associated with applying for qualified federal
2 funding programs, as determined by the department.

3 SECTION ~~22~~ 560.31 (1) of the statutes is renumbered 560.31 (1) (a) and
4 amended to read:

5 560.31 (1) (a) The department shall promulgate rules establishing procedures
6 under which a person may apply to become a certified capital company for receiving
7 certified capital investments under s. 560.32 (2) (b) 1. or a certified capital company
8 for receiving certified capital investments under s. 560.32 (2) (b) 2. The department
9 shall grant or deny an application for certification under this section within 30 days
10 of the date of application.

11 (b) If the department denies certification, the department shall include with
12 the denial a detailed description of the grounds for the refusal, including suggestions
13 for removal of those grounds. A person may submit an amended application within
14 15 days of receipt of a notice of denial. The department shall grant or deny the
15 amended application within 15 days of the date of the amended application. If the
16 department denies certification based upon the amended application, the
17 department shall include with the denial a detailed description of the grounds for the
18 refusal. A person whose amended application is denied may, within 10 days after the
19 department's decision, request a contested case hearing under s. 227.42 from the
20 department. If the final administrative or judicial proceeding results in a
21 determination that the application was denied in error, the department shall revise
22 its determination accordingly.

23 SECTION ~~22~~ 560.31 (2) (b) of the statutes is amended to read:

1 560.31 (2) (b) ~~The~~ At the time of application and on the date on which the person
2 is certified, the person has a net worth, ~~at the time of application,~~ of at least \$500,000
3 and ~~has~~ at least \$500,000 in cash, cash equivalents, and marketable securities.

4 ~~SECTION 29.~~ 560.31 (2) (g) of the statutes is created to read:

5 560.31 (2) (g) The person agrees to maintain in this state an investment office
6 and staff actively engaged in making investments until all investment pools have
7 been decertified.

8 ~~SECTION 30.~~ 560.31 (2) (h) of the statutes is created to read:

9 560.31 (2) (h) The person has provided the department with a list of all persons
10 that have an ownership interest in the person as provided under this paragraph. The
11 list shall include the percentage ownership interest of each owner and indicate
12 whether the interest is voting or nonvoting. If the person is an entity that is
13 registered under 15 USC 78l (g) or required to file reports under 15 USC 78o (d), the
14 person shall list only those persons having beneficial ownership of equity securities
15 of at least 5 percent. If a list contains the name of a business entity, the person shall
16 also include a list of all persons that have an ownership interest in the entity.

17 ~~SECTION 31.~~ 560.31 (2) (i) of the statutes is created to read:

18 560.31 (2) (i) The person has provided the department with a business plan
19 covering at least the 5-year period following the date of application.

20 ~~SECTION 32.~~ 560.31 (2) (j) of the statutes is created to read:

21 560.31 (2) (j) The person has provided the department with the person's
22 investment strategy, along with a description of the investment criteria the person
23 intends to follow.

24 ~~SECTION 33.~~ 560.31 (2) (k) of the statutes is created to read:

1 560.31 (2) (k) The person has provided the department with the person's
2 organizational chart.

3 ~~SECTION 34.~~ 560.32 (2) (b) of the statutes is renumbered 560.32 (2) (b) 1. and
4 amended to read:

5 560.32 (2) (b) 1. The Prior to the effective date of this subdivision [revisor
6 inserts date], the department may certify an investment under this subsection only
7 if, after the certification, the department will not have certified a total of more than
8 \$50,000,000 in investments under this subsection.

9 ~~SECTION 35.~~ 560.32 (2) (b) 2. of the statutes is created to read:

10 560.32 (2) (b) 2. Beginning on the effective date of this subdivision [revisor
11 inserts date], the department shall certify investments for which notices have been
12 received under par. (a), subject to the limit specified in this subdivision. The
13 department may certify an investment under this subdivision only if, after the
14 certification, the department will not have certified a total of more than
15 ~~\$50,000,000~~ in investments under this subdivision. \$75,000,000

16 ~~SECTION 36.~~ 560.32 (2) (c) of the statutes is renumbered 560.32 (2) (c) 1.

17 ~~SECTION 37.~~ 560.32 (2) (c) 2. of the statutes is created to read:

18 560.32 (2) (c) 2. The department may not certify an investment under par. (b)
19 2. if, after the certification, the investor, together with all affiliates of the investor,
20 would have in certified capital investments under par. (b) 2. more than the greater
21 of \$10,000,000 or 15 percent of the total amount of investments that the department
22 may certify under par. (b) 2.

23 ~~SECTION 38.~~ 560.32 (2) (d) of the statutes is amended to read:

24 560.32 (2) (d) If, as a result of the limitations under par. (b) or (c), the
25 department may not certify the full amount requested in applications for certified

1 capital investments submitted under par. (a), the department shall allocate prorate
2 the amounts available for certification ~~in order of priority based on the date on which~~
3 ~~the application was filed. If the amounts available for certification are insufficient~~
4 ~~to certify the full amount of all applications for certified capital investments that are~~
5 ~~submitted on the same day, the department shall prorate the available amount on~~
6 ~~the basis of the amount that the investor has committed to invest in the certified~~
7 ~~capital company under par. (a) among eligible applicants, except as otherwise~~
8 provided in this paragraph. If the proration would result in a certified capital
9 company having less than \$15,000,000 in certified capital, the department may not
10 allocate any amount to that certified capital company. If the proration would result
11 in no certified capital company having \$15,000,000 or more in certified capital, the
12 department may promulgate rules to implement an alternative allocation procedure.
13 Notwithstanding s. 227.24 (1) (a), (2) (b), and (3), the department is not required to
14 provide evidence that promulgating a rule under this paragraph as an emergency
15 rule is necessary for the preservation of the public peace, health, safety, or welfare
16 and is not required to provide a finding of an emergency for a rule promulgated under
17 this paragraph.

18 SECTION ~~39~~ 560.32 (3) of the statutes is renumbered 560.32 (3) (a) and
19 amended to read:

20 560.32 (3) (a) A certified investor may not, individually, or with or through one
21 or more affiliates, own 10% or more of the equity securities in, be an affiliate, a
22 general partner, or a manager of, or otherwise control the investments of the certified
23 capital company. This ~~subsection~~ paragraph does not preclude ~~a certified investor~~
24 any person from exercising its legal rights and remedies, including interim
25 management of a certified capital company, in the event that a certified capital

1 company is in default of its statutory or contractual obligations to ~~the certified~~
2 ~~investor that or any other person.~~

3 SECTION ~~40~~ 560.32 (3) (b) of the statutes is created to read:

4 560.32 (3) (b) Paragraph (a) does not preclude any person from establishing
5 controls to ensure that a certified capital company satisfies the requirements of s.
6 560.34 (1m).

7 SECTION ~~41~~ 560.33 (1) (intro.) of the statutes is amended to read:

8 560.33 (1) QUALIFICATIONS. (intro.) ~~A- Except as provided in sub. (2), a business~~
9 ~~is a qualified business if all of the following requirements are met, as of the time that~~
10 ~~a certified capital company, or any affiliate of the certified capital company, makes~~
11 ~~its first investment in the business.~~ ^{Keep} ~~Investment in the business will further economic~~

12 ~~development in this state.~~ all of the following requirements are met:

13 SECTION ~~42~~ 560.33 (1) (a) of the statutes is amended to read:

14 560.33 (1) (a) The business is headquartered in this state and its principal
15 business operations are located in this state or the business commits to relocate its
16 headquarters and its principal business operations to this state within 90 days after
17 the date on which the certified capital company makes its first investment in the
18 business.

19 SECTION ~~43~~ 560.33 (1) (b) of the statutes is renumbered 560.33 (1) (b) (intro.)
20 and amended to read:

21 560.33 (1) (b) (intro.) The business has no more than 100 employees, ~~at and any~~
22 of the following applies:

23 1. At least 75% of ~~whom~~ those employees are employed in this state.

24 SECTION ~~44~~ 560.33 (1) (b) 2. of the statutes is created to read:

1 560.33 (1) (b) 2. At least 75 percent of the total payroll of the business is paid
2 to employees who are employed in this state.

3 ~~SECTION 45.~~ 560.33 (1) (e) of the statutes is amended to read:

4 560.33 (1) (e) The business is not predominantly engaged in professional
5 services provided by accountants, business consultants, lawyers, or physicians.

6 ~~SECTION 46.~~ 560.33 (1) (g) of the statutes is amended to read:

7 560.33 (1) (g) The business is not engaged in banking ~~or~~, lending, lobbying, or
8 political consulting and does not make any loans to, or investments in, certified
9 capital companies.

10 ~~SECTION 47.~~ 560.33 (1) (h) of the statutes is created to read:

11 560.33 (1) (h) The business is not predominantly engaged in retail sales, unless
12 the business is approved by the department under sub. (2).

13 ~~SECTION 48.~~ 560.33 (1) (i) of the statutes is created to read:

14 560.33 (1) (i) The business was not organized by a certified capital company or
15 an affiliate of a certified capital company. This paragraph does not prohibit a
16 certified capital company from providing financial, technical, or similar advice to a
17 business before making an investment in the business.

18 ~~SECTION 49.~~ 560.33 (1) (j) of the statutes is created to read:

19 560.33 (1) (j) The business is engaged in at least one of the following activities:

20 1. Manufacturing, processing, or assembling products.

21 2. Providing services, unless the services are of such a nature that the
22 department disapproves of the business under sub. (2).

23 3. Conducting research and development.

24 4. Conducting any other business that is not excluded under this subsection
25 and that is approved by the department under sub. (2).

1 ~~SECTION 50~~ 560.33 (1) (k) of the statutes is created to read:

2 560.33 (1) (k) The business does not have a financial relationship with a
3 certified capital company or any affiliate of a certified capital company before the
4 date on which the certified capital company makes its first investment in the
5 business, unless the business is approved under sub. (2) notwithstanding such a
6 financial relationship. This paragraph does not prohibit a certified capital company
7 from providing financial advice to a business before making an investment in the
8 business.

9 ~~SECTION 51~~ 560.33 (2) of the statutes is renumbered 560.33 (2) (a) and
10 amended to read:

11 560.33 (2) (a) A certified capital company ~~may~~ shall, prior to making an
12 investment in a specific business, ~~request a written opinion from the department~~
13 ~~that a business in which it proposes to invest is a qualified business.~~ If the
14 ~~department determines that the business meets the requirements under sub. (1), the~~
15 ~~department shall issue a written opinion stating that the business is a qualified~~
16 business provide the department with a description of the proposed investment in
17 the form prescribed by the department. Within 15 business days of receiving the
18 description, the department shall determine whether the business is a qualified
19 business and the proposed investment is consistent with the certified capital
20 company's investment criteria and, if the business is not a qualified business or the
21 proposed investment is not consistent, notify the certified capital company in writing
22 of the determination and the reasons for the determination. If the department fails
23 to so notify the certified capital company within 15 business days of receiving the
24 request, the business shall be deemed a qualified business and the investment shall

1 be deemed consistent, notwithstanding any failure to satisfy sub. (1) or s. 560.34 (1)
2 (f).

3 SECTION ~~52~~ 560.33 (2) (b) and (c) of the statutes are created to read:

4 560.33 (2) (b) During the 15 business day period established under par. (a), the
5 department may make a determination that a business is a qualified business,
6 notwithstanding any failure to satisfy sub. (1), if the certified capital company's
7 proposed investment in the business will further the goals of this subchapter.

8 (c) If the department determines that a proposed investment is not consistent
9 with a certified capital company's investment criteria, the certified capital company
10 may, within 10 days after the department's decision, request a contested case hearing
11 under s. 227.42 from the department. If the final administrative or judicial
12 proceeding results in a determination that the investment is consistent, the
13 department shall issue a redetermination accordingly.

14 SECTION ~~53~~ 560.34 (1) (a) 1. of the statutes is amended to read:

15 560.34 (1) (a) 1. Except as otherwise provided in this
16 subdivision, equity securities or options, warrants, or other equity participation
17 instruments of the qualified business, unless the certified capital company, after the
18 investment and assuming full conversion and exercise of any equity participation
19 instrument, owns more than 50 percent of the voting equity of the qualified business.
20 The department may grant an exception to this percentage limitation under s. 560.33
21 (2).

22 SECTION ~~54~~ 560.34 (1) (a) 2. a. of the statutes is amended to read:

23 560.34 (1) (a) 2. a. The debt is unsecured not secured by a first priority lien on
24 any of the assets of the qualified business at the time of the certified capital
25 company's qualified investment in the qualified business.

1 ~~SECTION 55.~~ 560.34 (1) (a) 2. b. of the statutes is amended to read:

2 560.34 (1) (a) 2. b. The Except as otherwise provided in this subd. 2. b., the debt
3 is convertible into equity securities or options, warrants, or other equity
4 participation instruments such as options or warrants or has attached equity
5 participation rights, unless the debt and the equity participation instruments, if
6 fully converted and exercised, would result in the certified capital company owning
7 more than 50 percent of the voting equity of the qualified business. The department
8 may grant an exception to this percentage limitation under s. 560.33 (2).

9 ~~SECTION 56.~~ 560.34 (1) (b) of the statutes is amended to read:

10 560.34 (1) (b) As a condition of the investment, the qualified business agrees
11 not to use the proceeds from the investment for the purpose of relocating its
12 operations other than to this state.

13 ~~SECTION 57.~~ 560.34 (1) (c) of the statutes is amended to read:

14 560.34 (1) (c) As a condition of the investment, the qualified business agrees,
15 as long as the certified capital ~~corporation~~ company continues to hold the
16 investment, not to relocate its headquarters out of this state.

17 ~~SECTION 58.~~ 560.34 (1) (d) of the statutes is renumbered 560.34 (1) (d) (intro.)
18 and amended to read:

19 560.34 (1) (d) (intro.) As a condition of the investment, the qualified business
20 agrees, as long as the certified capital ~~corporation~~ company continues to hold the
21 investment, to maintain do any of the following:

22 1. Maintain at least 75% of its employees in this state.

23 ~~SECTION 59.~~ 560.34 (1) (d) 2. of the statutes is created to read:

24 560.34 (1) (d) 2. Pay at least 75 percent of its total payroll to employees who
25 are employed in this state.

SECTION ~~60~~ 560.34 (1) (e) of the statutes is amended to read:

560.34 (1) (e) As a condition of the investment, the qualified business agrees, as long as the certified capital ~~corporation~~ company continues to hold the investment, to maintain at least 75% of its employees at work sites that were maintained by the qualified business at the time that the investment was made or at work sites that are no more than 25 miles from the place where the headquarters or principal business operations of the qualified business are located at the time of the investment, unless the qualified business obtains an exemption from the department under this paragraph. ~~The department may grant an exemption unless it determines that the qualified business is locating the employees at new sites to take advantage of lower wage rates in the areas where the new sites are located.~~

SECTION ~~61~~ 560.34 (1) (f) of the statutes is created to read:

560.34 (1) (f) The investment is consistent with the certified capital company's investment criteria.

SECTION ~~62~~ 560.34 (1e) of the statutes is created to read:

~~560.34 (1e) USE OF QUALIFIED INVESTMENTS. (a)~~ Except as provided in ~~par. (b)~~ Subd. 1.

~~and (c) a certified capital company may expend moneys in an investment pool to purchase, for the benefit of its certified investors, U.S. treasury securities, or a guaranty, indemnity, bond, insurance policy, or other payment undertaking~~ the purchase of for the benefit of the certified capital company's certified investors

~~(2.)~~ No more than one of the certified investors of the certified capital company, or affiliate of such a certified investor, may provide a guaranty, indemnity, bond, insurance policy, or other payment undertaking under ~~par. (a)~~ Subd. 1.

~~(3.)~~ With respect to a certified capital company that receives certified capital investments under s. 560.32 (2) (b) 2., no more than 25 percent of any particular investment pool may be expended under ~~par. (a)~~ Subd. 1.

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1 ~~SECTION 63.~~ 560.34 (1m) (a) 2. of the statutes is renumbered 560.34 (1m) (a)
2 2. a. and amended to read:

3 560.34 (1m) (a) 2. a. ~~Within~~ With respect to a certified capital company that
4 receives certified capital investments under s. 560.32 (2) (b) 1., within 5 years after
5 the investment date for a particular investment pool, at least ~~50%~~ of the investment
6 pool shall be placed in qualified investments. 50 percent

7 ~~SECTION 64.~~ 560.34 (1m) (a) 2. b. of the statutes is created to read:

8 560.34 (1m) (a) 2. b. With respect to a certified capital company that receives
9 certified capital investments under s. 560.32 (2) (b) 2., within 5 years after the
10 investment date for a particular investment pool, at least 50 percent of the
11 investment pool shall be placed in qualified investments and, of such 50 percent, at
12 least 50 percent shall be placed in qualified investments in early stage businesses.

13 ~~SECTION 65.~~ 560.34 (1m) (b) of the statutes is amended to read:

14 560.34 (1m) (b) The proceeds of all capital of a qualified investment returned
15 to a certified capital company by a qualified business may be placed in new qualified
16 investments, which shall count toward the percentage requirements under par. (a)
17 and s. 560.36 ~~(3) (1) (c)~~. The department shall promulgate rules governing the extent
18 to which a reinvestment of proceeds from the sale of a qualified investment in a
19 qualified business may be counted toward the percentage requirements under par.
20 (a) and ss. 560.36 ~~(3) (1) (c)~~ and 560.37 (3m) (a) 2. These rules may provide that
21 reinvested proceeds from the sale of short-term investments shall be only partially
22 counted toward the percentage requirements under par. (a) and ss. 560.36 ~~(3) (1) (c)~~
23 and 560.37 (3m) (a) 2. The rules may also provide that proceeds from the sale of an
24 investment in a qualified business that are reinvested in that qualified business, or
25 an affiliate of that qualified business, shall be only partially counted toward the

1 percentage requirements under par. (a) and ss. 560.36 ~~(3)~~ (1) (c) and 560.37 (3m) (a)
2 2.

3 SECTION ~~66~~ 560.34 (2) of the statutes is renumbered 560.34 (2) (intro.) and
4 amended to read:

5 560.34 (2) (intro.) NONQUALIFIED INVESTMENTS. All certified capital investments
6 in a certified capital company that are not invested in qualified investments may be
7 held or invested by the certified capital company ~~as it considers appropriate, except~~
8 ~~that a certified capital company may not invest certified capital investments in an~~
9 ~~insurance company or in an affiliate of an insurance company. only in any of the~~
10 following:

11 SECTION ~~67~~ 560.34 (2) (a) to (k) of the statutes are created to read:

12 560.34 (2) (a) Deposits with a federally insured financial institution, as defined
13 in s. 705.01 (3).

14 (b) Certificates of deposit in a federally insured financial institution, as defined
15 in s. 705.01 (3).

16 (c) Investment securities that are obligations of the United States or its
17 agencies or instrumentalities, or that are obligations that are guaranteed fully as to
18 principal and interest by the United States.

19 (d) Commercial paper rated at least "A1," "P1," or the equivalent, by a
20 nationally recognized credit rating organization.

21 (e) Debt instruments rated at least "AA" or its equivalent by a nationally
22 recognized credit rating organization.

23 (f) Debt instruments issued by, or guaranteed with respect to payment by, an
24 entity whose unsecured indebtedness is rated at least "AA" or its equivalent by a

1 nationally recognized credit rating organization and which are not subordinated to
2 other unsecured indebtedness of the issuer or guarantor, as applicable.

3 (g) Swaps designed to realize or protect the value of a qualified investment, if
4 the counterparty is rated at least "A" or its equivalent by a nationally recognized
5 credit rating organization.

6 (h) Obligations of the state or any political subdivision of the state.

7 (i) Interests in money market or other mutual funds, the portfolios of which are
8 limited to cash and other permissible investments described in this subsection.

9 (j) A small business investment company that is approved by the department.

10 (k) Any other investments approved in advance in writing by the department.

11 ~~SECTION 68.~~ 560.34 (4) of the statutes is amended to read:

12 560.34 (4) RESTRICTIONS ON MANAGEMENT. No certified capital company may be
13 managed or controlled by, or have a general partner that is, an insurance company,
14 a person who is subject to taxation under subchs. I, II, and IV of ch. 76, a credit union
15 organized under ch. 186, a savings bank organized under ch. 214, a savings and loan
16 association organized under ch. 215, or a bank organized under ch. 221, or an affiliate
17 of an insurance company any such entity *and that is a certified investor*
in the certified capital company

18 ~~SECTION 69.~~ 560.34 (5) of the statutes is created to read:

19 560.34 (5) QUALIFIED INVESTMENT BECOMING NONQUALIFIED. (a) If a certified
20 capital company makes an investment authorized under s. 560.32 (2) (b) 2. in a
21 qualified business and during the time that the certified capital company still holds
22 the investment, the qualified business violates an agreement made under sub. (1) (b)
23 to (e), all of the following apply:

24 1. The violation does not affect the certified capital company's satisfaction of
25 the percentage requirements under sub. (1m) (a) 1. or 2., and 100 percent of the

1 amount of the qualified investment shall be counted toward the certified capital
2 company's satisfaction of those percentage requirements.

3 2. If the violation occurs within the first year after the qualified investment was
4 made, no amount of the qualified investment shall be counted toward the certified
5 capital company's satisfaction of the percentage requirements under ss. 560.36 (3)
6 and 560.37 (3m) (a).

7 3. If the violation occurs more than one year, but 3 years or less, after the
8 qualified investment was made, only 25 percent of the amount of the qualified
9 investment shall be counted toward the certified capital company's satisfaction of the
10 percentage requirements under ss. 560.36 (3) and 560.37 (3m) (a).

11 4. If the violation occurs more than 3 years, but 5 years or less, after the
12 qualified investment was made, only 50 percent of the amount of the qualified
13 investment shall be counted toward the certified capital company's satisfaction of the
14 percentage requirements under ss. 560.36 (3) and 560.37 (3m) (a).

15 5. If the violation occurs more than 5 years after the qualified investment was
16 made, 90 percent of the amount of the qualified investment shall be counted toward
17 the certified capital company's satisfaction of the percentage requirements under ss.
18 560.36 (3) and 560.37 (3m) (a).

19 (b) Notwithstanding par. (a), if a qualified business violates an agreement
20 under sub. (1) (b), (c), (d), or (e), the department may grant an exception to the
21 requirements under par. (a) 2. to 5. and not reduce the amount of the qualified
22 investment that is counted toward the certified capital company's satisfaction of the
23 percentage requirements under ss. 560.36 (3) and 560.37 (3m) (a), unless the
24 department determines that the qualified business is locating employees at new sites
25 to take advantage of lower wage rates in the areas where those sites are located.

1 ~~SECTION 70.~~ 560.34 (6) of the statutes is created to read:

2 560.34 (6) TRANSFERS FROM AFFILIATES. No certified capital company may
3 receive money from an affiliate that represents a return on the affiliate's certified
4 capital investment in another certified capital company.

5 ~~SECTION 71.~~ 560.35 (1c) of the statutes is created to read:

6 560.35 (1c) QUALIFIED INVESTMENTS. Within 3 business days after making a
7 qualified investment, a certified capital company shall report all of the following to
8 the department:

9 (a) The name of the qualified business in which the qualified investment was
10 made.

11 (b) The amount of the qualified investment.

12 (c) The type of investment, as specified in s. 560.34 (1) (a) 1. or 2. a. or b.

13 ~~SECTION 72.~~ 560.35 (1r) of the statutes is created to read:

14 560.35 (1r) QUALIFIED INVESTMENT SCHEDULE REPORT. Within 30 days after the
15 conclusion of each time period specified in s. 560.34 (1m) (a), a certified capital
16 company shall report to the department, in the format and substance prescribed by
17 the department, information required by the department for determining whether
18 the certified capital company is in compliance with the percentage requirements
19 under s. 560.34 (1m) (a).

20 ~~SECTION 73.~~ 560.35 (2) (intro.) of the statutes is amended to read:

21 560.35 (2) ~~ANNUAL~~ SEMIANNUAL REPORTS. (intro.) On Each year, on or before
22 January 31 annually, for the preceding 6-month period ending on December 31, and
23 on or before July 31, for the preceding 6-month period ending on June 30, a certified
24 capital company shall report, in the format and substance prescribed by the
25 department, all of the following to the department:

1 ~~SECTION 74.~~ 560.35 (2) (a) of the statutes is amended to read:

2 560.35 (2) (a) The amount of the certified capital company's certified capital at
3 the end of the preceding year 6-month period.

4 ~~SECTION 75.~~ 560.35 (2) (c) of the statutes is amended to read:

5 560.35 (2) (c) All qualified investments that the certified capital company has
6 made during the ~~previous calendar year~~ preceding 6-month period and the
7 investment pool from which each qualified investment was made.

8 ~~SECTION 76.~~ 560.35 (2) (d) of the statutes is created to read:

9 560.35 (2) (d) All amounts that the certified capital company has expended
10 under s. 560.34 (1e) (a), the investment pool from which each such expenditure was
11 made, and the percentage of the total amount of the investment pool which each such
12 expenditure represents.

13 ~~SECTION 77.~~ 560.35 (3) of the statutes is amended to read:

14 560.35 (3) FINANCIAL STATEMENTS. Within 90 days of the end of the certified
15 capital company's fiscal year, the certified capital company shall provide to the
16 department a copy of its annual audited financial statements, including the opinion
17 of an independent certified public accountant, and a copy of a report on agreed-upon
18 procedures prepared by an independent certified public accountant. The ~~audit shall~~
19 ~~address agreed-upon-procedures report shall identify the procedures performed by~~
20 the certified capital company, as prescribed by the department, that relate to the
21 methods of operation and conduct of the business of the certified capital company to
22 enable the department to determine whether the certified capital company is
23 complying with this subchapter and the rules promulgated under this subchapter,
24 including whether certified capital has been invested in the manner required under
25 s. 560.34. The financial statements and agreed-upon-procedures report provided

1 under this subsection shall be segregated by investment pool and shall be separately
2 audited on that basis to allow the department to determine whether the certified
3 capital company is in compliance with s. 560.34 (1m) this subchapter and the rules
4 promulgated under this subchapter.

5 SECTION ~~78~~ 560.36 (intro.) of the statutes is renumbered 560.36 (1) (intro.) and
6 amended to read:

7 560.36 (1) (intro.) A Except as provided in sub. (2), a certified capital company
8 may make a distribution only if one of the following conditions is met:

9 SECTION ~~79~~ 560.36 (1) to (4) of the statutes are renumbered 560.36 (1) (a) to
10 (d) and 560.36 (1) (c), as renumbered, is amended to read:

11 560.36 (1) (c) *Placement of 100% 100 percent of investments in qualified*
12 *investments.* The certified capital company has placed in qualified investments an
13 amount equal to 100% 100 percent of the certified capital investments in the
14 investment pool and at least 60 percent of the total amount of such investments
15 purchased equity securities; options, warrants, or other equity participation
16 instruments; or debt that is convertible into equity securities or options, warrants,
17 or other equity participation instruments.

18 SECTION ~~80~~ 560.36 (2m) of the statutes is created to read:

19 560.36 (2m) STATE PARTICIPATION. ~~Except as otherwise provided in this~~
20 ~~subsection,~~ a certified capital company that receives certified capital investments
21 under s. 560.32 (2) (b) 2. shall pay to the department, for deposit into the general
22 fund, 30 percent of the net profit^(S) and gains realized by the certified capital company
23 on qualified investments resulting from those certified capital investments. ^(S) The
24 payment required under this subsection is 20 percent of ^(S) ~~the~~ ^{those} net profit and gains
25 ~~realized by the certified capital company on qualified investments resulting from~~

except
that

1 ~~those certified capital investments~~ if the certified capital company, either
2 concurrently with or after receiving certified capital investments under s. 560.32 (2)
3 (b) 2., raises an additional pool of venture capital that does not contain certified
4 capital investments and that is of a sufficient size and is sufficiently focused on
5 investing in Wisconsin businesses, as determined by the department. A certified
6 capital company shall make all payments required under this subsection
7 concurrently with distributions of profits and gains to owners of the certified capital
8 company.

9 SECTION ~~81~~ 560.37 (1m) of the statutes is created to read:

10 560.37 (1m) REDUCED MANAGEMENT FEE. If a certified capital company violates
11 s. 560.34 (1e) (c) or (1m) (a), the department may order the certified capital company
12 to reduce its annual management fee to the percentage of the certified capital
13 company's total certified capital, or the total dollar amount, specified in that order.
14 A certified capital company may, within 10 days after receiving an order under this
15 subsection, request a contested case hearing under s. 227.42 from the department.
16 If the final administrative or judicial proceeding results in a determination that the
17 order was issued in error or was unreasonable, the department shall rescind or revise
18 the order accordingly.

19 SECTION ~~82~~ 560.37 (3m) (a) (intro.) and 2. of the statutes are consolidated,
20 renumbered 560.37 (3m) (a) and amended to read:

21 560.37 (3m) (a) A certified capital company may voluntary decertify itself as
22 a certified capital company ~~if any of the following conditions are met: 2. The only~~
23 ~~if the~~ certified capital company has placed in qualified investments an amount equal
24 to ~~100%~~ ^{100 percent} of the certified capital investment in the certified capital company.

25 SECTION ~~83~~ 560.37 (3m) (a) 1. of the statutes is repealed.

1 ~~SECTION 84.~~ 560.37 (4) of the statutes is amended to read:

2 560.37 (4) EFFECT OF DECERTIFICATION. Decertification of a certified capital
3 company or an investment pool has the effects specified in ~~s.~~ ss. 71.07 (7m) (e), 71.28
4 (7m) (e), 71.47 (7) (d) and (7m) (e), and 76.635 (4).

5 SECTION 85. 560.37 (5) of the statutes is amended to read:

6 560.37 (5) NOTICES TO CERTIFIED INVESTORS. The department shall notify a
7 certified investor when the certified capital company tax credit arising from a
8 certified investment is no longer subject to recapture and forfeiture under ~~s.~~ ss. 71.07
9 (7m) (e), 71.28 (7m) (e), 71.47 (7) (d) and (7m) (e), and 76.635 (4).

10 ~~SECTION 86.~~ **Nonstatutory provisions.**

11 (1) PERFORMANCE EVALUATION AUDIT. The joint legislative audit committee is
12 requested to, and may, direct the legislative audit bureau to perform a performance
13 evaluation audit of the program under subchapter II of chapter 560 of the statutes,
14 which shall include evaluating the overall effectiveness of the program. If the
15 committee directs the legislative audit bureau to perform an audit under this
16 subsection, the bureau shall file its report as described in section 13.94 (1) (b) of the
17 statutes by January 1, 2005.

18 (2) EXISTING CONTRACTS.

19 (a) *Definition.* In this subsection, "certified capital company" has the meaning
20 given in section 560.30 (2) of the statutes.

21 (b) *Effect on ~~new~~ contracts.* Existing If a certified capital company is party to a
22 contract that is in effect on the effective date of this paragraph and that contains
23 provisions that are inconsistent with subchapter II of chapter 560 of the statutes, as
24 affected by this act, but that are not inconsistent with any applicable law in effect
25 immediately before the effective date of this paragraph, then, notwithstanding

1 subchapter II of chapter 560 of the statutes, as affected by this act, the parties to the
2 contract may perform their obligations, and exercise their rights, under those
3 provisions of the contract until the contract expires or is extended, modified, or
4 renewed, whichever occurs first.

5 **SECTION ~~87~~. Initial applicability.**

6 (1) The treatment of sections 71.05 (6) (a) 15., 71.07 (7m), 71.10 (4) (cp), 71.21
7 (4), 71.26 (2) (a), 71.28 (7m), 71.30 (3) (dm), 71.34 (1) (g), 71.45 (2) (a) 10., 71.47 (7)
8 and (7m), 71.49 (1) (dm) and (dn), 77.92 (4), 560.30 (3), and 560.37 (4) and (5) of the
9 statutes first applies to taxable years beginning on July 1, 2005.

10 (2) The treatment of section 560.32 (2) (b) 2. of the statutes, as it relates to
11 claiming the credit under section 76.635 of the statutes first applies to taxable years
12 beginning on July 1, 2005.

13 **SECTION ~~88~~. Effective dates.** This act takes effect on the day after publication,
14 except as follows:

15 (1) RETROACTIVE EFFECT. The creation of sections 560.32 (3) (b) and 560.34 (1) ^{(f) 1. and 2.}
16 ~~(a) and (b)~~ of the statutes takes effect retroactively to May 13, 1998.

17 (END)

**2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBs0231/3insJK
JK:.....

Insert 10 - 25

SECTION 1. 76.635 (2) of the statutes is renumbered 76.635 (2) (a) and amended to read:

76.635 (2) (a) ~~When~~ For taxable years beginning before July 1, 2005, an insurer that makes a certified capital investment may credit against the fees due under s. 76.60, 76.63, 76.65, 76.66 or 76.67, for 10 years beginning with the year of the investment, either ~~10%~~ 10 percent of that investment or the amount by which the sum of the insurer's certified capital investments and the insurer's qualified investments exceeds the insurer's qualified investments in the taxable year before the insurer first claimed the credit under this section, whichever is less.

History: 1997 a. 215; 1999 a. 30.

SECTION 2. 76.635 (2) (b) of the statutes is created to read:

76.635 (2) (b) For taxable years beginning after June 30, 2005, an insurer that makes a certified capital investment may credit against the fees due under s. 76.60, 76.63, 76.65, 76.66 or 76.67, for 10 years beginning with the year of the investment, either 5 percent of that investment for the first 2 taxable years and 11.25 percent of that investment for the remaining 8 taxable years or the amount by which the sum of the insurer's certified capital investments and the insurer's qualified investments exceeds the insurer's qualified investments in the taxable year before the insurer first claimed the credit under this section, whichever is less.

End of Insert 10 - 25

(intro.)

Section #. 560.31 (2) of the statutes is amended to read:

(intro.)

Ment

560.31 (2) REQUIREMENTS FOR CERTIFICATION. The department shall certify a person as a certified capital company if the department determines that all of the following conditions have been met:

(a) The person is a partnership, corporation, trust or limited liability company, whether organized for profit or not for profit, that has as its primary business activity the investment of cash in qualified businesses.

(b) The person has a net worth, at the time of application, of at least \$500,000 and has at least \$500,000 in cash, cash equivalents and marketable securities.

(c) The directors, officers, general partners, trustees, managers or members or persons having a similar function are familiar with the requirements of this subchapter.

(d) At least 2 officers, directors, general partners, trustees, managers or members each have at least 2 years of experience in the venture capital industry.

(e) The person has included, in any offering material involving the sale of securities, the statement required under s. 560.32 (1).

(f) The person has paid a nonrefundable application fee of \$7,500.

History: 1997 a. 215.

21-13

Section #. 560.34 (1) (intro.) of the statutes is amended to read:

560.34 (1) QUALIFIED INVESTMENTS REQUIREMENTS. (intro.) In order for a certified capital company to prevent disqualification under s. 560.37 of an investment pool, the certified capital company shall ensure that the investment pool makes qualified investments in accordance with the schedule under sub. (1m). ~~An investment~~ ^{Except as provided in sub. (1g), aa.} is a qualified investment if the investment meets all of the following requirements:

History: 1997 a. 215.

23-14

Sec #. CR, 560.34 (1g):

(B) (CS) 560.34 (1g) DISCRETIONARY EXEMPTIONS. The Department may grant an ^{exemption} ~~exemption~~ from any ~~the~~ requirements under sub. (1) if the certified capital company is in ^{compliance} substantial compliance with the requirement.